

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON DC 20268-0001**

Rate and Service Changes to Implement)
Functionally Equivalent Negotiated Service) Docket No. MC2004-3
Agreement With Bank One Corporation)

**REPLY COMMENTS OF J.P. MORGAN CHASE & CO.
IN RESPONSE TO NOTICE OF INQUIRY NO. 1
(October 24, 2005)**

J.P. Morgan Chase & Co. ("Chase") respectfully submits these reply comments pursuant to the Commission's September 27 Notice of Inquiry No. 1 Regarding Status of Settlement Agreement" ("NOI"). We respond here to the initial comments on Questions 5-9 of the NOI filed on October 14 by the Association for Postal Commerce ("PostCom"), the Direct Marketing Association ("DMA"), the Office of Consumer Advocate ("OCA"), the United States Postal Service, and Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. ("Valpak"). We also note where relevant the October 20 reply comments of the Newspaper Association of America ("NAA").

These comments reveal an extraordinary consensus. None of the commenting parties oppose the uncapped discounts proposed by Chase and the Postal Service, and all but one affirmatively support the NSA terms. Furthermore, all of the commenters agree that the Commission should reconsider expeditiously whether the discount cap is appropriate, without regard to extraneous issues such as the merits of "pure volume-based discounts." Specifically:

(1) In response to Question No. 5, none of the commenting parties that signed the Modified Stipulation and Agreement have withdrawn their support for the NSA terms proposed in the Stipulation. “The OCA considers itself bound by that agreement, *so long as the record remains materially the same* as it was at the time OCA signed the agreement.” OCA Response at 1 (emphasis in original). “To the extent that reopening of the record and reconsideration by the Commission relates solely to the [NSA] with Bank One in Docket No. MC2004-3, Valpak stands by its agreement. That is, it supports the NSA that was the subject matter of the Stipulation and Agreement.” Valpak Comments at 1.

(2) In response to Question No. 6, all of the commenting parties agree that interested persons already have received ample notice that Chase and the Postal Service are proposing an NSA with uncapped rate discounts, and that due process does not require any further notice or opportunity to intervene with respect to this proposal. See DMA Comments at 1-3; OCA Response at 3; PostCom Response at 1-2; USPS Responses at 15-16; Valpak Comments at 1-3; *accord*, Chase Comments at 16-22.

(3) In response to Question No. 7, all of the commenting parties agree that this proceeding should *not* be broadened to consider “issues related to Negotiated Service Agreements based solely on pure volume-based discounts.” See DMA Comments at 3-4; OCA Response at 3; PostCom Response at 1-2; USPS Responses at 2-6, 15-16; Valpak Comments at 1-3; NAA Reply Comments at 1-2; *accord*, Chase Comments at 23-26.

(4) In response to Question No. 8, no participant has sought to conduct discovery or submit testimony rebutting the evidence proffered by Chase and the Postal

Service. See DMA Comments at 4; OCA Response at 3 (stating that the OCA does not expect to conduct discovery or file rebuttal testimony on the Plunkett Declaration, or on testimony sponsoring new volume data unless “the testimony would materially alter the record”); PostCom Response at 1-2; Valpak Comments at 3 (“To the extent that any resulting Commission Opinion and Recommendation Upon Reconsideration pertains specifically and exclusively to the Bank One NSA, and does not alter that proposal, Valpak does not object and would not contemplate litigating any issue.”). Moreover, we have been authorized by counsel for American Postal Workers Union, AFL-CIO, to state that APWU also does not intend to pursue discovery of the proffered testimony.¹

(5) The only previous non-intervenor to submit comments in response to Order No. 1444 is the DMA—and the DMA agrees that the “renewed request of J.P. Morgan Chase and the Postal Service for approval of NSA discounts without a cost savings cap raises no issues of due process for current nonparticipants in the case. Interested parties have been on notice from the outset that the Postal Service and Bank One were proposing an NSA with uncapped discounts.” DMA Comments at 1-3.

¹ The only issue to prompt even a theoretical divergence of views is the threshold question of whether discovery of the supplemental testimony by signatories to the Stipulation and Agreement is appropriate at all. The OCA reserves the right to engage in discovery if the supplemental evidence “constitutes a major departure from evidence previously filed,” OCA Response at 2, or would “materially alter the record on which the OCA based its decision to settle,” *id.* at 3. And the Postal Service states that it “will not object to participation by signatories in discovery on issues raised by additional testimony.” USPS Responses at 13. Because no signatory has requested discovery, Chase does not need to address the general question of discovery by the settling parties, and the Commission does not need to resolve the issue.

CONCLUSION

For the reasons stated above and in Chase's September 14 Petition to Reopen Record, Chase respectfully requests that the Commission reopen the record, admit the supplemental evidence proffered by the NSA proponents, limit this proceeding to the issues raised by the Governors' request for reconsideration, and remove the cap on discounts.

Respectfully submitted,

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